### **HOUSE BILL 691**

# By Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 18, relative to consumer protection and to enact the Tennessee Mobile Telephone Lemon Law of 2007.

## BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following language as a new part:

§47-18-2901.

This part shall be known and may be cited as the "Tennessee Mobile Telephone Lemon Law of 2007."

§47-18-2902.

As used in this part, unless the context otherwise requires:

- (1) "Collateral charges" means commercial mobile radio service providerinstalled or agent-installed items or service charges, registration fees, insurance
  charges, sales taxes, license fees, early termination fees, E911 fees, any similar
  governmental charges and other reasonable expenses incurred for the purchase of the
  mobile telephone and commercial mobile radio service;
- (2) "Commercial mobile radio service" or "CMRS" means commercial mobile radio service under Sections 3(27) and 332(d) of the Communications Act of 1934 as amended by the Federal Telecommunications Act of 1996, 47 U.S.C. § 151, et seq., the Omnibus Budget Reconciliation Act of 1993, and 47 C.F.R. § 20.9, and includes service provided by any wireless two-way communication device, including radio telephone communication used in cellular telephone service, personal communication service, or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communication service, or a network access

line. "Commercial mobile radio service" also includes, but is not limited to, any and all broadband personal communications service, cellular radio telephone service, geographic area specialized mobile radio (SMR) services in all bands that offer real-time, two-way voice service that is interconnected with the public switched network, incumbent wide area SMR service, or any other cellular or wireless telecommunications service. Nothing in this definition shall be construed to require compliance by any amateur radio operator or such radio system;

- (3) "Commercial mobile radio service provider" means any person, corporation, or entity licensed by the federal communications commission to offer CMRS in the state of Tennessee, and includes, but is not limited to, broadband personal communications service, cellular radio telephone service, geographic area SMR services in the 800 MHz and 900 MHz bands that offer real-time, two-way voice service that is interconnected with the public switched network, incumbent wide area SMR licensees, or any other cellular or wireless telecommunications service to any service user;
- (4) "Comparable mobile telephone" means a new mobile telephone of comparable worth to the same make and model with all options and accessories, with appropriate adjustments being allowed for any model year differences;
- (5) "Consumer" means the purchaser (other than for purposes of resale) or the lessee of a mobile telephone, any person to whom such mobile telephone is transferred during the duration of the commercial mobile radio service provider's express warranty applicable to such mobile telephone, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty. "Consumer" does not include any governmental entity or any business or commercial entity;
- (6) "Full purchase price" means the actual cost paid by the consumer, including all collateral charges, less a reasonable allowance for use;

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- (7) "Manufacturer" means any person who manufactures or assembles new or unused mobile telephones or, in the case of mobile telephones not manufactured in the United States, the importer of such mobile telephones;
- (8) "Mobile telephone" means an analog, cellular, digital or wireless telephone, which is sold and registered for commercial mobile radio service in the state of Tennessee;
- (9) "Person" means every natural person, partnership, corporation, association, trust, estate or other legal entity;
- (10) "Reasonable allowance for use" means that amount directly attributable to use by a consumer prior to such consumer's first report of the nonconformity to the commercial mobile radio service provider, its agent or dealer and during any subsequent period when the mobile telephone is not out of service by reason of repair, plus a reasonable amount for any damage not attributable to normal wear;
- (11) "Substantially impair" means to render a mobile telephone unreliable or unusable for normal operation; and
- (12) "Term of protection" means the shorter of the term of applicable express warranties or the period of one (1) year following the date of original commercial mobile radio service of the mobile telephone to a consumer; or, in the case of a replacement mobile telephone provided by a commercial mobile radio service provider to a consumer under this part, one (1) year from the date of delivery to the consumer of the replacement mobile telephone.

### §47-18-2903.

If a new mobile telephone does not conform to all applicable express warranties and the consumer reports the nonconformity, defect or condition to the commercial mobile radio service provider, its agent or its authorized dealer during the term of

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protection, the commercial mobile radio service provider, its agent or its authorized dealer shall correct the nonconformity, defect or condition at no charge to the consumer, notwithstanding the fact that such repairs are made after the expiration of such term. Any corrections or attempted corrections undertaken by an authorized dealer under the provisions of this section shall be treated as warranty work and billed by the dealer to the commercial mobile radio service provider in the same manner as other work under warranty is billed.

### §47-18-2904.

- (a) The commercial mobile radio service provider must replace the mobile telephone with a comparable mobile telephone or accept return of the mobile telephone from the consumer, cancel any service contract on such mobile telephone and refund to the consumer the full purchase price if:
  - (1) The nonconformity, defect or condition substantially impairs the mobile telephone; and
  - (2) The commercial mobile radio service provider, its agent or authorized dealer is unable to conform the mobile telephone to any applicable express warranty after a reasonable number of attempts.
  - (b) Refunds shall be made to the consumer.
  - (c) It shall be an affirmative defense to any claim under this part:
  - (1) That an alleged nonconformity does not substantially impair a mobile telephone; or
  - (2) That a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a mobile telephone by a consumer.

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- (a) It shall be presumed that a reasonable number of attempts have been undertaken to conform a mobile telephone to the applicable express warranties, if:
  - (1) The same nonconformity has been subject to repair three (3) or more times by the commercial mobile radio service provider or its agents or authorized dealers during the term of protection, but such nonconformity continues to exist; or
  - (2) The commercial mobile radio service provider or its agents or authorized dealers have been notified of the nonconformity on five (5) separate dates during the term of protection, and given the opportunity to correct the nonconformity, but such nonconformity continues to exist; or
  - (3) The mobile telephone is out of service by reason of repair for a cumulative total of thirty (30) or more calendar days during the term of protection.
- (b) The term of protection and such thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike or fire, flood or other natural disaster.
- (c) It shall be the responsibility of the consumer, or the representative of the consumer, prior to proceeding under the provisions of §47-18-2904, to give written notification by certified mail directly to the manufacturer of the need for the correction or repair of the nonconformity. If the address of the commercial mobile radio service provider is not readily available to the consumer in the owner's manual or commercial mobile radio service provider's warranty received by the consumer at the time of purchase of the mobile telephone, such written notification shall be mailed to an authorized dealer. The authorized dealer shall upon receipt forward such notification to the commercial mobile radio service provider. If, at the time such notice is given, any of the conditions set forth in subsection (a) already exists, the commercial mobile radio

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service provider shall be given an additional opportunity after receipt of the notification, not to exceed ten (10) days, to correct or repair the nonconformity. §47-18-2906.

Any action brought under this part shall be commenced within six (6) months following:

- (a) Expiration of the express warranty term; or
- (b) One (1) year following the date of original delivery and activation of service of the mobile telephone to a consumer, whichever is the later date. §47-18-2907.

If a consumer finally prevails in any action brought under this part, such consumer may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorneys' fees based on actual time expended, determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action. §47-18-2908.

A violation of any provision of this part is also a violation of §47-18-104. §47-18-2909.

- (a) Nothing in this part shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.
- (b) If a consumer elects to pursue any other remedy in state or federal court, the remedy available under this part shall not be available insofar as it would result in recovery in excess of the recovery authorized by §47-18-2904 without proof of fault resulting in damages in excess of such recovery.

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(c) Any agreement entered into by a consumer for, or in connection with, the purchase or lease of a new mobile telephone which waives, limits or disclaims the rights set forth in this part shall be void as contrary to public policy.

SECTION 2. This act shall take effect July 1, 2007, the public welfare requiring it.

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